IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-968859-D2
AND ALL OTHER SEAMAN DOCUMENTS
Issued to: WALTER S. POLLARD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1931

WALTER S. POLLARD

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 10 November 1971, an Administrative Law Judge of the United States Coast Guard at Portsmouth, Virginia, revoked Appellant's seaman documents outright upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Second Cook on board the United States N. S. MAUMEE under authority of the document above captioned, on or about 20 August 1971, Appellant did wrongfully assault and batter another crewmember with a dangerous weapon; to wit, a knife, resulting in injury to that crewmember.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence documentary evidence and the testimony of witnesses.

At the end of the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision was served on 10 November 1971. Appeal was timely filed on 18 October 1971 and perfected on 7 February 1972.

FINDINGS OF FACT

On 20 August 1971, Appellant was serving as a Second Cook on board the U. S. N. S. MAUMEE and acting under authority of his document while the ship was at sea. About a month earlier a verbal altercation had taken place between Appellant and another

crewmember of the same race. On this date of 20 August 1971 Appellant engaged in an argument with the same crewmember, a bedroom utilityman, concerning discrimination. At its termination Appellant left the mess hall and returned seven to ten minutes later with a knife in his right hand and hidden under his apron.

As Appellant entered the mess hall he swung with the knife at the bedroom utilityman who was standing with his back to a bulkhead. Another crewmember shouted a simultaneous warning, causing the utilityman to jump back, however, he was struck in the left side, level with and approximately seven inches to the left of his navel. The other crewmember grabbed Appellant and told the utilityman to obtain care for his wound. Appellant immediately reported the incident to the Master and admitted striking the utilityman with a knife whereupon he was subsequently confined in a spare room.

The utilityman after receiving first aid and after being evacuated by seaplane was delivered to Goose Bay, Labrador, where he was hospitalized and subsequently operated on. He was repatriated to the United States on 1 September 1971 and was still unfit for duty on 28 September 1971, the date of the hearing.

Appellant has served on merchant vessels for approximately twenty (20) years and there is no Coast Guard record of any prior misconduct.

A complaint was lodged against Appellant by a Special Agent of the F.B.I. after which a warrant was issued for his arrest, charging him with assault with a dangerous weapon with intent to do bodily harm. The matter was brought to a Grand Jury which returned a report of failure to concur in indictment, commonly referred to as a "No Bill."

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Various grounds are urged in his notice of appeal and subsequent brief, and they are primarily an attack upon the Judge's assignment of weight to that evidence.

Appellant also asserts that he acted in self-defense upon threat of bodily harm, that there was no proof of intent or premeditation, and that provocation justified the assault and battery. He also feels that the Grand Jury action and the subsequent hearing constitutes double jeopardy.

APPEARANCE: Epstein and Epstein of Norfolk, Virginia, by Nathan Epstein, Esq.

OPINION

I find that the evidence required to conclude that the Appellant wrongfully assaulted and battered a fellow crewmember with a knife in such manner to cause serious injury was considerably more than substantial. To disapprove such findings it must be found that they are not based on substantial evidence or that the evidence is so inherently unreliable, incredible, or irrelevant that no finding can be supported as a matter of law. When there is conflicting evidence, it is the function of the trier of the facts, the Judge, to assign weight to the evidence and to resolve conflicts. It is evident that the Judge has sifted and sorted all the evidence in this case and his findings of fact will not be disturbed. The evidence relied upon was the testimony of eyewitnesses, documentary material made in the regular course of business and within statutory requirements, Appellant's own testimony and the actual knife used. The evidence produced was substantial evidence of a reliable and probative character and fully established the case against Appellant.

II

The use of a knife in self-defense was not justified since there was neither creditable evidence that Appellant was in imminent danger of serious bodily injury nor any basis for reasonable belief that he was in imminent danger of any bodily injury, prior to or during the knifing attack. His own testimony supported by other eyewitnesses indicate that he always moved forward to the attack, never retreated, nor was he ever placed in any jeopardy. As a matter of fact Appellant had to be physically restrained by other crewmembers from continuing the stabbing attack.

III

The argument that there must be a showing of intent and/or premeditation before Appellant can be found guilty of assault and battery is unfounded in these administrative proceedings. Appellant has, throughout his appeal, alluded to criminal procedures and appears uninformed as to the degree of proof required. As previously noted the evidence provided was substantial and sufficient for a showing of wrongful assault and battery in these proceedings.

IV

Appellant's contention that revocation of his document for the offense of assault and battery is double jeopardy in light of the "no bill" Grand Jury action is without merit. Administrative

proceedings under 46 U.S.C. 239 have been consistently held to be a remedial sanction rather than a penal one since the primary purpose is to provide a deterrent for the protection of seamen and for safety of life at sea. This position has support in 46 U.S.C. 239(h) which provides for the referral of evidence of criminal liability to the Attorney General for prosecution under the criminal code, thus recognizing and providing for the separability of the penal from the remedial or administrative action. There is also a distinction with respect to the degree of proof required in these administrative proceedings (substantial evidence) and criminal actions (proof beyond a reasonable doubt). Further, it should be noted that Grand Jury action is not a trial and as such is not res judicata of the criminal aspects of the offense. Although there is some element of punishment involved when a seaman's document is revoked, this does not, even when a criminal trial is held, constitute double jeopardy within the meaning of the Fifth Amendment of the Constitution of the United States since the revocation is not a criminal penalty nor a matter of criminal record.

V

Appellant appears to claim that if the assault and battery is properly proved then the revocation order is excessive in light of his good prior record and his family hardship and therefore desires probation.

I find that an unprovoked attack, sudden and without warning resulting in a hospitalizing injury can not be viewed very lightly. Knifings aboard vessels are of grave concern to all who make a living by following the sea and are of grave concern to the Coast Guard which is charged with promoting safety at sea and protecting other seamen against a possible recurrence. An individual who can not exercise a great deal of self-restraint during minor disagreements is not fit to pursue such an occupation. I have considered the hardship imposed upon his family, however, it's a hardship he should have considered when he chose to act in the manner he did. I find that Appellant has such propensities and proclivities for violence that the order of revocation was proper.

ORDER

The order of the Administrative Law Judge dated at Portsmouth, Virginia on 10 November 1971, is AFFIRMED.

C. R. BENDER

Signed at Washington, D. C., this 23rd day of May 1973.

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